

121 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Central Vermont Public Service Corporation;
Green Mountain Power Corporation;
Vermont Electric Cooperative, Inc.

Docket No. ER08-12-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued November 30, 2007)

1. On October 2, 2007, Central Vermont Public Service Corporation, Green Mountain Power Corporation, and Vermont Electric Cooperative, Inc. (collectively, the VJOs)¹ requested a limited waiver of the July 2, 2007 deadline for the submission of Composite Offer forms to qualify for the annual Forward Capacity Auction (FCA) for the 2010-2011 Capacity Commitment Period, pursuant to ISO New England Inc.'s (ISO-NE) Market Rule 1. The VJOs had intended to submit a Composite offer form to allow participation in the Forward Capacity Market (FCM) of a single resource consisting of their shares of 68 MW of their Hydro Québec Interconnection Capability Credits (HQICCs)² and 68 MW of capacity under a long-term power purchase contract with Hydro Québec. Agreeing with ISO-NE's comments, the VJOs subsequently modified their request so that their 68 MW of capacity during the months of December through February effectively would be treated as additional HQICCs. As discussed below, we will grant the VJOs' request for a waiver, insofar as necessary, to allow the 68 MW of capacity in question to be treated as HQICCs under Market Rule 1.

¹ The VJOs are vertically-integrated utilities with a long-term obligation to serve retail customers that require use of a portion of the Phase I/II High Voltage Direct Current (HVDC) transmission facilities interconnected with Hydro Québec (the HQ Interconnection) for purchases under a long-term power purchase contract.

² HQICCs are installed capacity credits, i.e., credits applied against capacity obligations, given to entities that support the HQ Interconnection.

I. Background

2. The HQ Interconnection is an HVDC interconnection between the Québec and New England control areas with a maximum thermal rating of 2000 MW.³ The Commission has found that the HQ Interconnection provides significant reliability benefits to the New England Control Area and has ordered that entities that support the HQ Interconnection—the Interconnection Right Holders (IRH)—be given HQICCs.⁴ All of the VJOs are IRHs.

3. In 1990 the VJOs began purchases under a power purchase contract with Hydro Québec (the VJO Contract). Under this contract, the VJOs are required to take and pay for 310 MW of capacity and energy at an annual load factor of 75 percent. The VJO Contract currently supplies approximately one-third of Vermont's total energy needs and terminates in 2020. Of the 310 MW of the VJO Contract capacity, 68 MW is transmitted over the HQ Interconnection.⁵

4. On April 16, 2007, the Commission issued an order conditionally accepting ISO-NE's market rules that implement the FCM in New England and directing a compliance filing.⁶ In that order, the Commission ordered ISO-NE, *inter alia*, to amend the FCM rules so that the FCA will not accept more capacity contracts than can be accommodated by the transfer capability of the HQ Interconnection without reducing HQICCs.⁷ In other words, the Commission found that the total value of import capacity contracts over the HQ Interconnection accepted in the FCM auctions should be limited to the HQ Interconnection transfer capability minus the value of the extant HQICCs; this difference is labeled the HQ Interconnection (HQI) Excess. Accordingly, when the HQI Excess equals zero, no import capacity should be allowed.

5. On April 30, 2007, the VJOs submitted qualification materials to ISO-NE for the annual FCA in February 2008 for the Capacity Commitment Period of June 2010 through May 2011. The submission designated 68 MW of import capacity contracts over the HQ Interconnection as an Import Capacity Resource.

³ The HQ Interconnection was built in two phases. The Phase I HVDC converter facilities were retired in March 2007, and the HQ Interconnection now operates solely to deliver power to the Sandy Pond, Massachusetts HVDC converter (Phase II).

⁴ See *ISO New England, Inc.*, 119 FERC ¶ 61,045, at P 159 (April 16 Order), *order on reh'g*, 120 FERC ¶ 61,087 (2007).

⁵ VJO Answer at 3.

⁶ See April 16 Order.

⁷ *Id.* P 167, 168.

II. The VJOs' Initial Filing

6. In their initial filing, the VJOs sought waiver of the July 2, 2007 deadline for the submission of Composite Offer forms to qualify for the annual FCA for the 2010-2011 Capacity Commitment Period. The VJOs requested that the Commission allow them to submit, within ten days of a Commission order granting this waiver, a Composite Offer form to allow participation in the FCM of a single resource consisting of their shares of 68 MW of their HQICCs and 68 MW of capacity under the VJO Contract.⁸

7. The VJOs stated that circumstances had changed since the VJOs submitted their qualification materials to ISO-NE on April 30, 2007, and that these changes will prevent them from obtaining credit for the VJO Contract in the FCM.⁹ They stated that ISO-NE had announced that it will make filings with the Commission in October 2007 to reduce the Phase II transfer capability limit from 1800 MW to 1400 MW while raising the HQICCs—for the nine months when they have value—from 1200 MW to 1400 MW.¹⁰ The VJOs explained that these changes will eliminate the HQI Excess for nine months of the year, and therefore, the portion of the VJO Contract provided over the HQ Interconnection cannot be considered an Import Capacity Resource and receive credit in the FCM.¹¹

8. The VJOs noted that HQICCs provide capability credit for only nine months of the year. In an attempt to obtain credit for their capacity on a year-round basis while remaining in compliance with the April 16 Order—which states that the FCA will not accept more capacity contracts than can be accommodated by the transfer capability of the HQ Interconnection without reducing HQICCs—the VJOs requested to submit their VJO Contract capacity contracts over the HQ Interconnection and HQICCs as a Composite Offer. The VJOs stated that such a Composite Offer will allow them to receive credit for the HQICCs in nine months of the year and receive credit for the VJO Contract capacity in the remaining three winter months of December, January, and February when HQICCs have no value. Since HQICCs are zero for December through February, the VJOs contended that their proposed solution will comply with the April 16

⁸ Separate resources seeking to participate together in an FCA can submit a Composite Offer form if they meet the conditions described in section III.13.1.5 of Market Rule 1.

⁹ Request for Waiver at 9.

¹⁰ *Id.*

¹¹ Capacity resources that wish to participate in the FCA as a single resource must agree to provide capacity for an entire year.

Order; the FCA should be able to accept the VJO Contract over the HQ Interconnection for the three winter months without reducing VJO's HQICCs, according to the VJOs.

9. The deadline for submitting Composite Offer forms, however, has already passed. Therefore, the VJOs asked for limited waiver to allow them to submit the Composite Offer form within ten days of a Commission order granting such a waiver. The VJOs stated that the recent changes in the HQ Interconnection transfer capability limit and the increase of HQICCs prevented them from acting on a timely basis.

10. Subsequently, ISO-NE filed comments in which it did not take a position on the VJOs' proposal, but suggested that, if the Commission approves the proposal, the VJOs' proposed treatment not be characterized as a Composite Offer but rather as year-round HQICCs. Agreeing with ISO-NE in an answer, the VJOs modified their request so that their 68 MW of capacity during the months of December through February effectively would be treated as additional HQICCs.

III. Procedural Matters

11. Notice of the VJO's October 2, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 57,925, with interventions and protests due on or before October 23, 2007. On October 23, 2007, ISO-NE, the IRH Management Committee, and the New England Power Pool Participants Committee filed timely motions to intervene. The Connecticut Department of Public Utility Control filed a motion to intervene out-of-time.

12. On October 23, 2007, H.Q. Energy Services, Inc. (HQUS) filed a motion to intervene and protest to the VJOs' request for waiver. HQUS argues that the VJOs' proposal violates the ISO-NE tariff and that the VJOs have not justified a waiver of the tariff deadline for Composite Offers.

13. Specifically, HQUS states that the VJO proposal violates the rules for Composite Offers. HQUS contends that each capacity resource must qualify its capacity on a seasonal basis, and the amount qualified would be the minimum capacity that a resource is capable of delivering in any month during that season.¹² Due to the fact that HQICCs are zero from December through February, for purposes of the capacity market the winter capability of the VJOs' HQICCs is zero, HQUS states. Thus, HQUS maintains that the VJOs' could not qualify their HQICCs.

14. In addition, HQUS argues that HQICCs should not qualify as a capacity resource because they are financial credits and not a physical resource.¹³ HQUS explains that the

¹² HQUS Protest at 6. HQUS also points out that the winter season in ISO-NE is an eight-month period from October to May.

¹³ *Id.* at 7.

FCM is a physical capacity market. HQUS goes on to point out that HQICCs have no performance requirements—and thus have no penalties for non-performance—unlike physical capacity resources.

15. According to HQUS, the VJOs' proposal also violates the tariff because the proposal amounts to impermissible netting. While HQUS admits that the VJOs do not explicitly propose netting, HQUS argues that the proposed Composite Offer which mixes the VJO Contract with HQICCs achieves the same result. HQUS argues that since the Commission does not allow such netting, there should be no exception for the VJOs.¹⁴

16. HQUS then argues that if the Commission grants the VJOs' request, other IRHs may seek special rules to treat the HQICCs as a year-round, physical resource—which, HQUS argues, the HQICCs are neither. Further, even if the proposed Composite Offer were permissible, HQUS states that the VJOs have not justified a waiver of the filing deadline. HQUS avers that granting the waiver would amount to discriminatory relief only applied to the VJOs.

17. In its comments, ISO-NE did not take a position as to whether the Commission should grant or deny the requested waiver. However, ISO-NE stated that, if the Commission does grant the waiver, ISO-NE would seek permission to implement the waiver as if that portion of the VJOs' HQICCs had year-round capacity, with the exception that during the winter months the VJO Contract must meet the delivery conditions and performance requirements of other import contracts.

18. On November 2, 2007, the VJOs filed an answer to HQUS's protest. The VJOs also agree with ISO-NE's comments that if the Commission grants the VJOs' request for waiver, ISO-NE should be permitted to implement the waiver on a basis that is similar to that of a Composite Offer. Specifically, the VJOs contend that ISO-NE should be permitted to implement the VJOs' request as if 68 MW of the VJOs' HQICCs have year-round capacity, with the exception that during the winter months—namely, December, January, and February—their contract for the purchase of capacity from Hydro Québec (i.e., the VJO Contract) should be required to meet the delivery conditions and performance requirements of other import contracts. The VJOs contend that this resolution is appropriate and adopt ISO-NE's explanation that technically the HQICCs cannot be considered as part of a Composite Offer because they cannot participate in the FCA. Therefore, the VJOs request in their answer that the Commission allow waiver of the ISO-NE market rules to the extent that ISO-NE may treat 68 MW of the VJOs' HQICCs as if they have year-round capacity in the three winter months, provided that the contract capacity over the HQ Interconnection meets the performance requirements applicable to import contracts.

¹⁴ HQUS notes that it in fact supports such netting, but maintains that the Commission should be consistent and not allow only the VJOs to engage in netting.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), ISO-NE's timely, unopposed motion to intervene serves to make it a party to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the VJOs' answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

21. At the outset, the Commission notes that the VJOs' initially-proposed treatment of the 68 MW of capacity for the three winter months and 68 MW of HQICCs for the other nine months of the Capability Year as a type of Composite Offer is unique to the specific circumstances of this case. Related to the VJOs' unique situation is the fact that after the VJOs' first request for qualification of their 68 MW on April 30, 2007, through its committees on August 21 and September 7, 2007, ISO-NE approved a reduction in the HQ Interconnection transfer capability from 1800 MW to 1400 MW and an increase in the HQICCs—the tie benefits of the HQ Interconnection that are credited to IRHs—from 1200 MW to 1400 MW. This change resulted in an HQI Excess of zero and thereby prohibited the designation of the VJOs' 68 MW as an Import Capacity Resource, which led, in turn, the VJOs to file their present request and proposal.

22. Because, however, the VJOs have modified their request for relief and no longer seek a waiver of the Composite Offer form deadline, we will address only the counter-proposal provided by ISO-NE in its comments, which the VJOs adopted in their answer. Similarly, with respect to HQUS's protest to the VJOs' initial request for waiver of the Composite Offer form deadline and their proposed treatment of nine months of HQICCs and three months of 68 MW of capacity as a Composite Offer, we note that some of HQUS's arguments have been rendered moot by the VJOs' subsequent modification of this request. Consequently, we will address HQUS's arguments in light of the VJOs' second, revised request.

23. The Commission agrees with HQUS that HQICCs differ from a typical capacity resource in that they are a financial credit and not a physical resource. Due to this difference, the Commission agrees with ISO-NE that the VJOs' initially-proposed Composite Offer cannot be given exactly the same treatment as a standard Composite Offer. Importantly, HQICCs do not participate in and cannot be withdrawn from the FCA. Composite Offers also typically comprise a summer resource and one or more

winter resources,¹⁵ which is not the case here. The VJOs' initially-proposed Composite Offer effectively combined (part of) a year-round resource with a nine-month financial credit that spans both seasons.

24. The Commission does not consider the treatment proposed by ISO-NE in its comments to result in impermissible netting.¹⁶ The VJOs seek to qualify for year-round capacity credits without violating the April 16 Order, which states that the FCA will not accept more capacity contracts than can be accommodated by the transfer capability of the HQ Interconnection without reducing HQICCs. The FCM rules limit the amount of import capacity over HQ Interconnection to the difference between the total available HQ capacity and the value of the HQICC. No displacement of HQICCs—and consequent reduction in tie benefits—will occur because the VJOs propose only to combine three months of import capacity (i.e., 68 MW during the months of December through February) with the remaining nine months of HQICCs.¹⁷ For the three months that the 68 MW of import capacity under the VJO contract is utilized, the value of the HQICC is zero. Thus, there are no limitations on the use of the available HQ capacity during this part of the winter period, and netting will therefore not occur.

25. To alleviate the concerns surrounding the anomalous circumstances of the VJOs' initially-proposed Composite Offer, and consistent with the request of ISO-NE in its comments and in the VJOs' answer, we will grant ISO-NE's waiver of the ISO-NE market rules to the extent necessary to allow 68 MW of the VJOs' HQICCs to be treated as though they have year-round capacity, with the condition that during the winter months the VJO Contract must meet the delivery conditions and performance requirements of other import contracts.

26. The Commission finds that this proposed treatment rationally resolves the issues that resulted from changes to the value of HQICCs and the transfer capability. For nine months of the year the HQI Excess is zero and, accordingly, the FCM will not accept any portion of the VJO Contract over the HQ Interconnection during those months. For the remaining three months when HQICCs are zero and the HQI Excess is thus greater than zero (i.e., 1400 MW), the VJO Contract capacity could receive credit in the FCM.

¹⁵ Market Rule 1 § III.13.1.5.

¹⁶ HQUS presumably uses the term "netting" to mean the displacement of HQICCs by imports of capacity, which is prohibited in the April 16 Order.

¹⁷ The VJOs explain that, "[i]nstead, they are seeking to use the HQICCs that derive from the HQ Interconnection to offset their Installed Capacity Requirement (ICR) in nine months of the year and to use the portion of the VJO Contract that is delivered over the HQ Interconnection to meet their ICR in the other three months when the HQ Interconnection does not provide them any tie benefits." VJO Answer at 6.

27. The treatment proposed by ISO-NE in its comments would appropriately credit the VJOs over the total 12-month period. We find that treating 68 MW of the VJOs' nine months of HQICCs (March through November) along with three months of 68 MW of capacity from their VJO Contract (December through February) as if this combination were a consecutive twelve months of HQICCs strikes an appropriate and fair balance under these circumstances. Without this proposed treatment, the VJOs would be forced to procure an additional 68 MW of capacity for the three winter months at issue, though they in fact have 68 MW to cover that amount of their ICR. Thus, adopting the proposed treatment under these circumstances fosters economic efficiency. Further, we agree with ISO-NE that the proposed treatment will not adversely affect the FCA and should not affect any other parties, while appropriately maintaining the capacity value of the VJO Contract and the HQICCs. Moreover, the performance requirements during this critical three-month period should allay reliability concerns that other parties may have with the proposed treatment.

28. The Commission agrees with the VJOs that the request for waiver in the instant filing is consistent with the standards according to which the Commission granted waiver in a recent proceeding. In *Waterbury Generation, LLC*,¹⁸ the Commission explained the standard by which parties may obtain a one-time waiver of a filed rate. Specifically, we have granted tariff waivers where (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties. The Commission finds that the request for limited waiver in the instant case satisfies the aforementioned conditions. We note that the recent changes in the HQ Interconnection transfer capability limit and the increase of HQICCs prevented the VJOs from acting on a timely basis. We conclude that no third parties will be harmed by granting this limited waiver of the New England market rules. Moreover, the Commission does not anticipate the granting of this waiver will adversely affect ISO-NE's preparation for the FCA for the 2010-2011 Capacity Commitment Period, as evidenced by ISO-NE's comments.

29. Due to the specific and unique facts presented above, the Commission will grant the VJOs' request for limited waiver of the ISO-NE market rules for the 2010-2011 Capacity Commitment Period, consistent with ISO-NE's proposal in its comments, so as to enable ISO-NE to consider 68 MW of the VJOs' HQICCs to have capacity value for the entire 12 months of the Capacity Commitment Period. We emphasize the importance of enforcing the FCM rules in order to effectively administer the markets in New England. However, we recognize, along with ISO-NE, that the FCA is a new process for all parties involved, and participants are still becoming familiar with the lengthy and complex rules. Furthermore, given that ISO-NE does not expect the requested treatment

¹⁸ See *Waterbury Generation, L.L.C.*, 120 FERC ¶ 61,007 (2007).

to have an effect on the FCA, the Commission finds that granting of the requested waiver is appropriate.

30. The Commission also notes that this order speaks only to the waiver of ISO-NE's market rules, as necessary to implement ISO-NE's modification of the VJOs' specific request.

The Commission orders:

The VJOs' request for waiver of ISO-NE's market rules is hereby granted to the extent necessary to implement their proposal, as modified by ISO-NE's comments, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.